

**Children 12 Years Old and Younger in Juvenile Hall  
A Report by the Juvenile Justice Commission  
January 5, 2010**

**Introduction**

The Juvenile Justice Commission of Santa Clara County is a state-mandated, court-appointed authority. The broad purpose of the Commission is to inquire into the administration of the juvenile court law in Santa Clara County. The Commission is dedicated to the promotion of an effective juvenile justice system operated in an environment of credibility, dignity, fairness, and respect for the youth of Santa Clara County.

The Juvenile Justice Commission is established through the provisions of Article 2, commencing with Section 225 of Chapter 2 of Part 1 of Division 2 of the California State Welfare and Institutions (W&I) Code.

The Commission's responsibilities include:

- Inspecting juvenile facilities including shelters, detention facilities and group homes used for the placement of any minor in Santa Clara County
- Conducting public or closed hearings on matters relating to juvenile law in the County
- Advocating for needed services for youth in the justice system

In January 2009, the Juvenile Justice Commission (JJC) initiated an investigation of a 10-year old child who had been placed in Juvenile Hall. This investigation initially began with the intention of understanding the process for placement of young juveniles in Juvenile Hall. In April 2009, this investigation was expanded when three siblings, under the age of 12 were detained in Juvenile Hall. This report and recommendations are a result of this investigation and are made in fulfillment of the above responsibilities.

**Background**

In January 2009, the JJC approved a subcommittee to investigate the detention of young minors with mental health issues in Juvenile Hall. This investigation was prompted by a report to the JJC of a 10-year old child with a diagnosed mental illness who had been detained in Juvenile Hall for several months because an appropriate placement was not available. The initial investigation was focused on the processes that had led to this youth having a long-term placement in Juvenile Hall, but expanded to review the broader issue of children 12 years old and under being detained in Juvenile Hall.

This investigation included:

- A review of nation-wide research and best practices about the issue of preteens engaged in the juvenile justice system.
- Meetings with probation staff, mental health and school staff.
- Site visit to the Transitions (Mental Health) Unit B-4.
- Interviews with national experts.

- Case review of 30 youths under the age of twelve detained in Juvenile Hall.
- Observation of the processes of the Court for Individualized Treatment of Adolescents (CITA Court, sometimes referred to as Mental Health Court.)

## **National Trends and Research**

### **Adolescent Development**

The juvenile justice system supports the belief that youth are different than adults and that the juvenile justice system needs to reflect those differences. The John D. and Catherine T. MacArthur Foundation supports an initiative aptly entitled, “Adolescent Development and Juvenile Justice”. Headed by Laurence Steinberg Ph.D. at Temple University, the network uses MacArthur funding to research issues surrounding youth in the system. They have developed six policy papers which are available online at [www.adjj.org](http://www.adjj.org).

1. After interviewing 1400 individuals aged 11 to 24 year olds in juvenile detention centers and in the community, the findings showed that age matters. Eleven to thirteen year olds performed significantly worse than 14 to 15 year olds, who in turn performed significantly worse than 16 to 17 year olds on a standard assessment tool used in adult court with mentally impaired individuals. The youngest group was nearly three times more likely than youth older than 15 to be significantly impaired in reasoning and understanding, two important components of legal competence. One third of 11 to 13 year olds and one-fifth of 14 to 15 year olds had deficits that courts might see as serious enough to question their ability to participate in a trial.

2. In an eight year study of 1,355 serious offenders aged 14 to 17 in two cities, it was found that the majority of adolescents report little or no anti-social behavior three years after their involvement with the court. Another 15% went from a high level of antisocial activities to none. Some of the results were attributed to the youth receiving mental health services and alcohol/drug abuse treatment. The report’s conclusion: youth can change their behavior.

3. The MacArthur Foundation also suggests that developmental immaturity be added to a list of mitigating factors. Younger delinquents were more likely to lack foresight and focus on short term gratification than older youth. As they age they do become less impulsive, particularly after having experienced substance abuse and mental health treatment. The foundation cites studies that demonstrate that brain maturation “is a process that continues through adolescence and into early adulthood....There is good evidence that brain systems that govern impulse control, planning, and thinking ahead are still developing well past the age of 18”. (8)

There is a presumption in Juvenile Law that youth under 14 may not have the capacity to understand their crime. Section 26 of the California Penal Code states that:

*All persons are capable of committing crimes except those belonging to the following classes:*

1. *Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew of its wrongfulness*
2. *Persons who are mentally incapacitated*

3. *Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, and or culpable negligence. Etc.*

### **Numbers of Preteens Engaged in the Juvenile Justice System**

Jeffrey Butts and Howard Snyder of the Chapin Hall Center for Children at the University of Chicago published a study entitled "Arresting Children: Examining Recent Trends in Preteen Crime." They examined children aged 13 and under who had committed crimes. The study analysis tracks data collected by law enforcement agencies across the country from 1980 through 2006. It finds that preteen crime has followed the pattern of older juvenile crime where crime itself fell to a thirty year low. (1)

The study offered a picture of preteen offenders:

- In 2006, preteen offenders accounted for 6% of all juvenile arrests for the FBI's Violent Crime Index offenses, compared to 5% in 1980.
- The number of violent crime arrests involving preteens was small compared with those of older youth, but the increase in preteen arrests between 1980 and 2006 outpaced the increase in arrests of older youth (41% versus 9%).
- Increases in preteen offending focused largely on a handful of offense types, including simple assault, aggravated assault, and weapons law violations.
- Juvenile arrests for forcible rape grew from 4% in 1980 to 8% in 2006.
- A similar trend was seen in other sex offenses that grew from 8% in 1980 to 13% in 2006.
- Trends in preteen arrest rates between 1980 and 2006 were very similar to those among older youth. This indicates that much of the change in preteen arrests is best characterized as a general change in juvenile arrests. This is not a change unique to preteens.

### **Children 12 Years and Under Involved in Sexual Offenses**

Information derived by Butts/Snyder from the National Incident-Based Reporting System (NIBRS) combines four offenses under the heading of sexual assault including forcible rape, forcible sodomy, sexual assault with an object and forcible fondling. The report finds that 62% of preteen sexual assault offenders were referred to law enforcement for forcible fondling, 19% for forcible sodomy and 14% for forcible rape. A large proportion of the victims of these crimes were found to be very young themselves. All professionals are keenly aware of the necessity to report these victimizations.

The younger victimizers are more likely to victimize youth ages 7-12 (60%) and they are more likely to victimize an acquaintance (71%). They are also less likely than older teens to be arrested for their crime. 29% for those 12 and under and 37% of older teens are arrested for their crime. They are more likely to commit their assaults in school or in a home.

Veneziano and Venezano in a Review of the Literature of "Adolescent Sex Offenders," found that the group was a heterogeneous one. They had a "variety of severe family problems including neglect and physical and sexual abuse. Academic and behavior problems, psychopathology, and social isolation were also found."

**Local Data and Issues**

In Santa Clara County, Huskey and Associates, a national social science research organization, was hired by Santa Clara County to examine the current need for mental health treatment among detained youth and recommend best practices for treatment. Huskey and Associates presented their findings in a report entitled, "Implementing a Trauma-Informed Mental Health and Juvenile Probation System," October 31, 2008. This report observes that a significant proportion of youth in the Santa Clara County Juvenile Justice System suffer from mental illness and/ or trauma. The report also recommends that we fully integrate mental health, substance abuse, probation and treatment provider case-planning and service delivery systems.

The Santa Clara County Probation Department provided data on the numbers of young minors 12 and under, arrested and or detained in Santa Clara County over a three year span 2007-2009. (Data presented at the Juvenile Justice Systems Collaborative Meeting, October 7, 2009 retrieved 12/15/09 at <http://www.sccgov.org/keyboard/attachments/Committee%20Agenda/2009/October%207,%202009/202542977/TMPKeyboard202823194.pdf>)

**Table: Number of Youth 12 and Under Arrested, Brought to Juvenile Hall and Detained**

Year	Arrested	Brought to JH % of Arrested	Detained % of Arrested % of Brought to JH
<b>FY 2007</b>	574	27 4.70%	12 2.09% 4.44%
<b>FY 2008</b>	679	27 3.97%	13 1.91% 4.81%
<b>FY 2009 Through 3/31/09 (9 months)</b>	443	26 5.87%	11 2.48% 4.23%
<b>Totals</b>	1696	80 4.72%	36 2.12% 4.50%

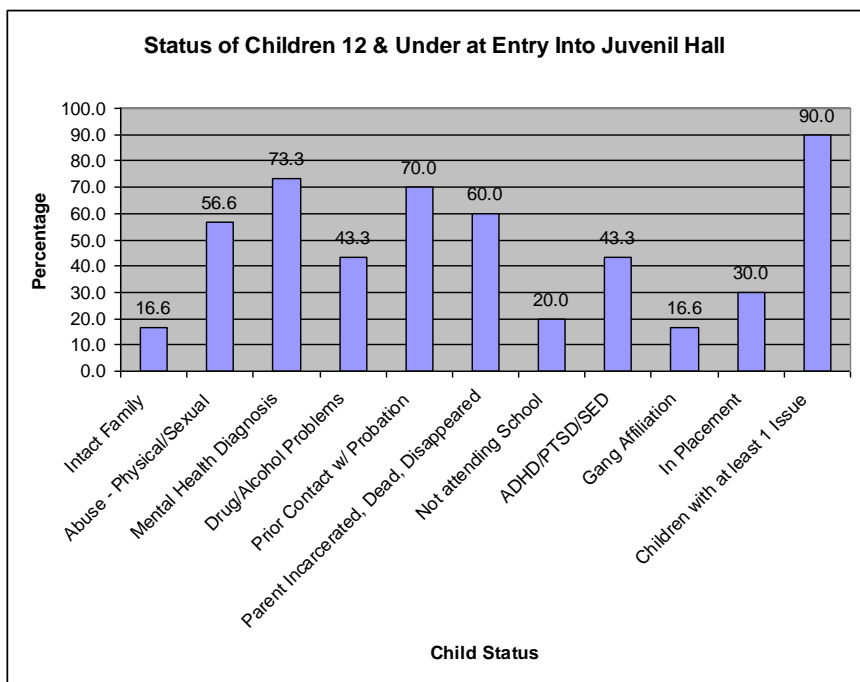
The JJC reviewed the court files of 30 youth **12 and under** who had been housed in Juvenile Hall and had a case opened.

Of the 30 youth petitioned and detained in Juvenile Hall at age **12 and under**:

- 17 had been a Department of Family and Children’s Services client and had been physically or sexually abused.
- 22 had a mental health diagnoses including PTSD, bi-polar, depression, borderline personality, suicidal, oppositional defiant, and conduct disordered.
- 13 already had significant drug and alcohol problems.
- 21 had prior Probation contact without detention.

- 18 had a parent who was incarcerated, dead or disappeared.
- 6 were not attending school at all. 13 were diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Post Traumatic Stress Disorder (PTSD), or Serious Emotional Disturbance (SED), and/or has an Individual Education Plan (IEP).
- 5 had a gang affiliation.
- 9 had been or were currently placed in an institutionalized setting.
- 27 had one or more of the above issues.

The chart below shows the percentage of youth in each of the above status categories.



## **Conclusion**

In the JJC case abstraction of children 12 years and younger who are detained in Juvenile Hall, we found the following:

- They are likely to have a mental health diagnoses and need mental health intervention.
- They are likely to have a history of abuse and neglect.
- They frequently have experienced trauma.
- They frequently have learning disabilities and scholastic difficulties.
- There frequently is not a responsible parent who can take custody of the youth

Santa Clara County Probation and Mental Health staff estimate that between 60-80% of all youth in Juvenile Hall have mental health or trauma issues. In our analysis of children 12 years and younger in Juvenile Hall reveals this number to be 90%.

A review of national juvenile justice best practices, local data, and the case review of children 12 years old and younger in Juvenile Hall shows the following:

- Juvenile Hall programming focuses on teenagers not pre-teens and therefore the detention model may not be appropriate or effective.
- Incarceration prevents authorities from focusing on the appropriate remedy to insure public safety and rehabilitation of youth.
- Because of their age, children 12 years and under in Juvenile Hall may need a one-on-one counselor to provide them physical protection from older children or themselves.
- Children 12 and under are more likely to improve with the involvement of a strong parental figure and coordinated community treatment services.

Venziano recommends a complete and thorough assessment of the youth's treatment needs and the "uncovering of the significant trauma experiences the youth may have had". These researchers also found that adult-like treatment for juvenile sex offenders would not be as effective as a multi-systemic approach of working with the youth in their school, family and neighborhood. They also encourage the use of other programs successful with delinquent youth such as cognitive-behavioral techniques such as employed in the James and Muriel Wright Ranches.

This conclusion appears to be particularly significant when considering the arrest of children 12 years old and younger. Our local case abstraction shows that only a small percentage of children who were arrested and detained in juvenile hall had an intact family. A significant number of children detained in Juvenile Hall had mental health issues, family issues, had experienced trauma, or some combination of these. Based on our review, the JJC questions the appropriateness and value of placing preteens in Juvenile Hall

The JJC found that when children twelve and under were detained in Juvenile Hall, the Probation Department, the Mental Health Department and the Medical Services unit worked very hard to ensure the safety and address their needs. However, the JJC questions if Juvenile Hall is ever an appropriate placement for children this young. Children 12 and under are not likely to benefit from this type of care and it has the potential of re-traumatizing a child who is already traumatized. For the rehabilitation of the child and the safety of the community, we believe that alternative placement in the community is preferred.

We recognize that while the number of children detained under 12 is small, they often represent some of the most challenging youth we serve. It is imperative that alternatives be developed.

Some less restrictive options for children 12 years and under are:

- Returning the child home with short term intensive supports and longer term wraparound services.

- Therapeutic Foster Care, such as those being developed in the Department of Family and Children's Services. Therapeutic Foster Parents have specialized training to deal with children with severe behavioral challenges.
- Residential treatment with staff trained to deal with severe behavioral and mental health issues with an integrated plan to return the child to a less restrictive setting.

Currently, local authorities have stated that we do not have the appropriate residential facilities to handle children 12 and under who have committed serious crimes and/or have serious behavior issues. Since it is likely that Santa Clara County is not alone in dealing with children 12 and under being detained in Juvenile Hall, the County should explore working with other Bay Area Counties to develop some of these alternatives to Juvenile Hall placement on a regional basis.

**Commendations:**

1. To the Probation Department, Mental Health and the Medical Services Unit and Juvenile Court for their efforts to ensure the health and safety of children 12 and under detained at Juvenile Hall because of a lack of local placement options for these children.

**Recommendations:**

1. Santa Clara County's Juvenile Hall detention policy should be that children 12 years old and younger not be detained in Juvenile Hall when arrested.
2. Local alternatives should be developed for safe, emergency placement of children 12 and under who commit a serious crime.
3. The CITA Court protocols (Court for Individualized Treatment of Adolescents) should serve children 12 years and younger even if there is not a responsible adult available.
4. Therapeutic Foster Care homes should be developed to accommodate on a longer term basis, children 12 years old and younger.
5. The County should explore working with neighboring counties to develop a continuum of shared placements appropriate for children 12 years old and younger who commit a serious crime.

**Resources**

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